

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
IRENE VALENTIN, as Mother and
Natural Guardian, of AUTUMN VALENTIN and
IRENE VALENTIN, Individually,

Plaintiffs,

-against-

08 Civ. 2484 (CM)

MORRIS HEIGHTS HEALTH CENTER and
BRONX LEBANON HOSPITAL CENTER,

DECLARATION OF
MARA E. TRAGER

Defendants.

-----X
MARA E. TRAGER, pursuant to the provisions of 28 U.S.C. § 1746, declares under
penalty of perjury as follows:

1. I am an Assistant United States Attorney in the office of Michael J. Garcia,
United States Attorney for the Southern District of New York, attorney for defendant Morris
Heights Health Center (“Morris Heights” or the “federal defendant”) in this action. I am the
attorney assigned to the defense of this matter.

2. I submit this declaration in support of the federal defendant’s Motion to
Substitute the United States as Defendant, and to Dismiss the Complaint as Against the United
States.

3. Appended as exhibit A hereto is a true and complete copy of the Summons
and Complaint, filed on or about October 15, 2007 under index number 350541-2007, in the
Supreme Court of the State of New York, County of Bronx.

4. Appended as exhibit B is a true and complete copy of the certification of
United States Attorney Michael J. Garcia, dated February 29, 2008, that Morris Heights was

acting within the scope of its federal employment in connection with its treatment of plaintiff Irene Valentin between July 24, 2006 and December 4, 2006.

Dated: New York, NY
March 18, 2008

MARA E. TRAGER

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index # 350541/07
Date Filed: 10/15/07

IRENE VALENTIN as Mother and
Natural Guardian of AUTUMN VALENTIN
and IRENE VALENTIN, Individually,

Plaintiff,

- against -

MORRIS HEIGHTS HEALTH CENTER and
BRONX LEBANON HOSPITAL CENTER,

Defendants.

Plaintiff designates
Bronx County as the
Place of Trial

The basis of the venue
is Plaintiff's Residence

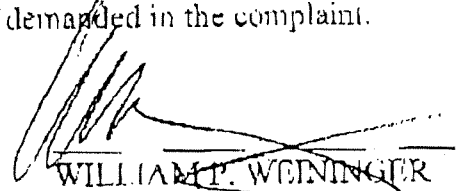
SUMMONS

Plaintiff resides at:
490 Southern Blvd., Apt
2D
Bronx, New York 10455

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: October 9, 2007


WILLIAM P. WEININGER

Attorney for Plaintiff

445 Hamilton Ave., Suite 1102
White Plains, New York 10601
(914) 328-5900

Defendants' Address:

Morris Heights Health Center
70 West Burnside Avenue
Bronx, New York 10453

Bronx Lebanon Hospital
1770 Grand Concourse
Bronx, New York 10457

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----x Index No. 350541/07

IRENE VALENTIN as Mother and
Natural Guardian of AUTUMN VALENTIN
and IRENE VALENTIN, Individually,

Plaintiff,

Verified Complaint

- against -

MORRIS HEIGHTS HEALTH CENTER and
BRONX LEBANON HOSPITAL CENTER,

Defendants.

-----x
Plaintiff, by their attorney, WILLIAM P. WEININGER, complaining of the
defendants herein, allege upon information and belief as follows:

AS AND FOR A CAUSE OF ACTION

FIRST: At all times herein mentioned, plaintiff IRENE VALENTIN was and
is the mother and natural guardian of plaintiff AUTUMN VALENTIN, an infant under
the age of fourteen.

SECOND: That at all times herein mentioned, Plaintiffs were and are residents
of the County of Bronx and State of New York.

THIRD: That at all times hereinafter mentioned, defendant MARCIA JONES,
(hereinafter "Jones") was and is a nurse midwife duly licensed to practice in the State
of New York.

FOURTH: That at all times hereinafter mentioned, defendant MORRIS HEIGHTS HEALTH CENTER (hereinafter "Morris Heights") was and is a health care facility located in the County of Bronx, State of New York.

FIFTH: That at all times herein mentioned defendant Jones was and is an agent servant and employee of defendant Morris Heights.

SIXTH: That at all times hereinafter mentioned, defendant BRONX LEBANON HOSPITAL CENTER was and is a hospital and health care facility located in the County of Bronx, State of New York.

SEVENTH: That from on or about and between July 24, 2006 and December 23, 2006 the defendants, their agents, servants, and/or employees, were responsible to render, certain obstetrical, medical, nursing, technical, pediatric and other health care to plaintiffs Irene Valentin and Autumn Valentin.

EIGHTH: That at all times herein mentioned the obstetrical, medical, radiological, nursing, technical, pediatric and other health care rendered by the defendants was done so in a negligent and careless manner and deviated from accepted standards of care.

NINTH: That by reason of the foregoing, the plaintiff AUTUMN VALENTIN has and continues to suffer serious and debilitating injuries, was caused to and continues to experience pain and suffering, has experienced, and continues to experience, the loss of enjoyment of life, and has in other ways been economically,

physically and otherwise injured and damaged.

TENTH: That solely by reason of the foregoing, the plaintiff IRENE VALENTIN has and continues to suffer serious and debilitating injuries, was caused to and continues to experience pain and suffering, has experienced, and continues to experience, the loss of enjoyment of life, will be required to incur substantial medical, vocational, technical, nursing, hospital and other expenses for and on behalf of herself and the infant plaintiff Autumn Valentin, and has in other ways been injured and damaged.

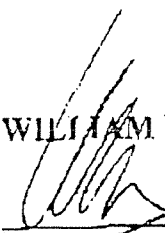
ELEVENTH: That by reason of the foregoing, the infant plaintiff Autumn Valentin has been damaged in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

TWELFTH: That by reason of the foregoing, the infant plaintiff IRENE VALENTIN has been damaged in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

THIRTEENTH: The within action falls within one or more of the exceptions under CPLR Section 1600.

WHEREFORE, Plaintiff's demand judgment against the defendants, for an amount in excess of the jurisdictional limits of all lower Courts, together with costs, interest and disbursements.

Dated: White Plains, New York
October 5, 2007


WILLIAM P. WEININGER

Attorney for Plaintiffs

~~445 Hamilton Ave., Suite 1102~~
White Plains, New York 10601
(914) 328-5900

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----x Index No.:

IRENE VALENTIN as Mother and
Natural Guardian of AUTUMN VALENTIN
and IRENE VALENTIN, Individually,

Certificate of Merit

Plaintiff,

- against -

MORRIS HEIGHTS HEALTH CENTER and
BRONX LEBANON HOSPITAL CENTER,
Defendants.


-----x
WILLIAM P. WEININGER, an attorney admitted to practice law before the
Courts of the State of New York, affirms the following to be true under penalties of
perjury:

I am the attorney for the plaintiff. I have reviewed the facts and circumstances
surrounding the above action and am fully familiar with same.

I have consulted with a physician who is licensed to practice medicine in the State
of New York, and whom I believe is knowledgeable as to the issues involved in this case.

On the basis of such review and discussion, I have concluded that there is a
reasonable basis for the commencement of this action.

Dated: White Plains, New York
October 9, 2007


WILLIAM P. WEININGER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----x Index No.

IRENE VALENTIN as Mother and
Natural Guardian of AUTUMN VALENTIN
and IRENE VALENTIN, Individually,

Plaintiff,

Attorney's
Verification

- against -

MORRIS HEIGHTS HEALTH CENTER and
BRONX LEHMAN HOSPITAL CENTER,
Defendants.

-----x
STATE OF NEW YORK)
) ss:
COUNTY OF WESTCHESTER)

WILLIAM P. WEININGER, an attorney duly licensed and admitted to
practice law in the courts of the State of New York, affirms the following:

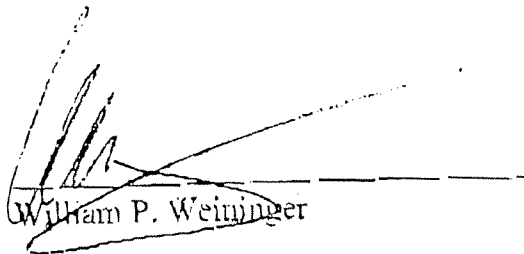
That I am the attorney for the plaintiff in the within action.

I have read the foregoing VERIFIED COMPLAINT and know the
contents. The same is true to my own knowledge except as to the matters therein
stated to be alleged on information and belief. As to those matters I believe it to be
true.

The reason this verification is made by me and not by plaintiff is that
your affiant maintains his office in a county other than where plaintiff resides.

I affirm that the foregoing statements are true under penalty of perjury.

Duly affirmed: White Plains, New York
October 9, 2007



William P. Weininger

EXHIBIT B

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York
By: MARA E. TRAGER (MT-4598)
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
Tel. No.: (212) 637-2799
Fax No.: (212) 637-2702
mara.trager@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IRENE VALENTIN, as Mother and :
Natural Guardian of AUTUMN VALENTIN :
and IRENE VALENTIN, Individually, :

Plaintiffs, :

-against- :

MORRIS HEIGHTS HEALTH CENTER and, :
BRONX LEBANON HOSPITAL CENTER, :

Defendants. :

CERTIFICATION

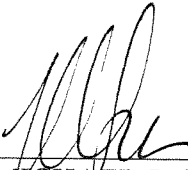
O8 Civ. _____

Index No. 350541/07

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I, MICHAEL J. GARCIA, the United States Attorney for the Southern District of New York, pursuant to the provisions of 42 U.S.C. § 233 and 28 U.S.C. § 2679(d), and by virtue of the authority vested in me by the Attorney General under 28 C.F.R. § 15.4, hereby certify, on the information now available, that defendant Morris Heights Health Center (“Morris Heights”) was acting within the scope of employment at the time it rendered medical care to plaintiff Irene Valentin between July 24, 2006 and December 4, 2006, and that, pursuant to 42 U.S.C. § 233(g),

Morris Heights is deemed to be an employee of the United States under the Federal Tort Claims Act.

Dated: New York, New York
February 29, 2008



MICHAEL J. GARCIA *Jan 8*
United States Attorney
Southern District of New York